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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

September 26, 1997

Via Hand Delivery

EX PARTE OR LATE FILED

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Federal-State Joint Board on Universal Service, CC
Docket No. 96-45

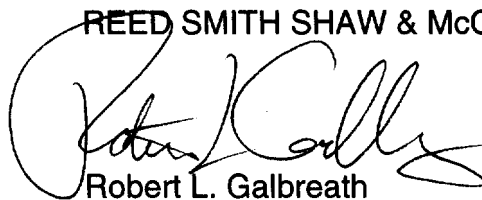
Dear Mr. Caton:

The National Association of State Telecommunications Directors ("NASTD"), by counsel and pursuant to Section 1.1206 of the Commission's rules, hereby submits an original plus one copy of an *ex parte* Supplement in the above-captioned docket. The instant Supplement is being filed pursuant to the request of the Commission staff.

Should there be any questions regarding the materials submitted herewith, please contact the undersigned.

Very truly yours,

REED SMITH SHAW & McCLAY LLP



Robert L. Galbreath

RLG/vdd
Enclosure

cc: Irene M. Flannery, Esq. (w/encl.)
Richard D. Smith, Esq. (w/encl.)
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Federal-State Joint Board)	CC Docket No. 96-45
on Universal Service)	

**EX PARTE SUPPLEMENT OF THE
NATIONAL ASSOCIATION OF STATE TELECOMMUNICATIONS DIRECTORS**

The National Association of State Telecommunications Directors ("NASTD") hereby submits this additional information in the above-captioned proceeding. This submission is made at the request of the Commission staff, and is being filed pursuant to Section 1.1206 of the Commission's rules. The information in this submission is designed to help the Commission better understand the current efforts underway at the state level to provide the best and most cost-effective telecommunications services to schools and libraries, and to allow for the synthesis of these efforts into the Universal Service support structure developed by the Commission in this proceeding.¹ Other than as referenced by footnote 3 below, the subject of the instant filing will be confined to the issue of direct application to the fund for reimbursement by the state telecommunications networks ("STNs").

¹ Although the main focus within this discussion is on the schools and libraries fund, the same treatment also should apply to the rural health care provider fund to the extent state telecommunications networks serve eligible public rural health care providers.

I. Overview of Current State Telecommunications Networks and Practices

Most states, through their respective legislatures, have established organizations for the procurement, oversight and management of telecommunications resources to meet the needs of state government. Each state telecommunications organization serves multiple government entities which may include state agencies, local and county governments, public health care agencies, public schools and public libraries. The state telecommunications organizations were created with the expectation of saving taxpayer money through the centralized procurement and operation of telecommunications facilities and services on a scale far larger than anything possible from individual government agencies.

The STNs procure a myriad of telecommunications services and hardware components from multiple service and equipment vendors and bundle the components into multifaceted packages available to their eligible agency participants.² The services offered include local and long distance voice communications, video transmission, dedicated and shared data networks, Internet access and premises wiring. All of the services and equipment utilized in an STN (e.g., routers, switched and private line voice services, high capacity data links, switching equipment, wiring) are procured from various

² Naturally, implementation varies from state to state, with various offerings of contracted services and hardware based on the needs of the member agencies, schools, etc.

providers through separate procurement efforts pursuant to a system of open and competitive bidding mandated by state procurement laws.³

The STNs depend on high volume usage for efficiency. By aggregating statewide demand, STNs are able to obtain significant volume discounts from the carriers and other vendors with which they contract. The volume purchasing power of aggregated government needs lowers the cost per unit of service for all government entities on the STN. For example, the State of Minnesota is able to provide Centrex-based local dial-tone to serve rural school districts at a price of \$14.00 per month, compared to the \$35 to \$50 per month these districts would otherwise pay for single business lines if they procured them individually. Other STNs are able to provide long distance services to their members at per minute rates substantially below what state agencies could obtain separately.

Costs of the STNs are passed on equitably to the government agencies based on the cost of providing the services.

³ While the contracts between vendors and STNs often are "multi-year" in duration, they often are subject to renewal by the states on a yearly basis in accordance with statutory procurement requirements. NASTD has argued in its recent filings in this docket and reiterates here that renewals of such contracts entered into prior to November 8, 1996, should be included in a grandfathered exemption from competitive bidding requirements, as should all STN contracts (including similar renewal provisions) entered into between November 8, 1996, and the time the competitive bidding mechanisms are established.

The states predominantly operate these networks on a cost-recovery basis, meaning the STNs typically do not receive direct state funding with which to acquire and maintain the services. Thus, to support their operations, the STNs allocate the costs of the aggregated services they provide, along with a small administrative charge to cover costs of the STN employees, contract administration and other related administrative expenses, among the government entities on the network. STN rates are subject to state oversight to ensure fair apportionment. In addition, as many STNs provide services to large state agencies which receive federal funds (e.g., social services, transportation, employment security and environmental enforcement), they are also subject to federal oversight pursuant to OMB Circular #A-87 to ensure proper cost allocation.

As noted above, many STNs make their services available to county and local governments (including public schools and libraries). Participation by these entities in the STN is voluntary. As a practical matter, when STNs are available, many schools and libraries choose to participate because of the significant cost savings they can realize.

II. Ability of STNs to Receive Universal Service Fund Disbursements

One key to the success of state telecommunications networks is centralization of service and billing. Currently, the STNs deal directly with the carriers and equipment vendors, paying prices for contracted services arrived at through

competitive procurements. In turn, participating agencies, schools and libraries pay the STNs their proportionate share of the costs of the STNs based upon the services each agency, school or library uses. In order to carry forward the benefits of this simplified organization into the implementation of the Universal Service discount program for schools and libraries, NASTD has requested partial reconsideration and clarification of the Commission's Universal Service Report and Order to permit the STNs to seek reimbursement directly from the schools and libraries fund for the services they provide to their eligible school and library members. The reimbursement to which the STNs would be entitled would be calculated based on the cumulative discounts of the various schools and libraries served by each STN. Each STN would then discount its rates to each eligible school and library on the STN and would ensure that each school and library gets the benefit of the full discount to which it is entitled in compliance with the guidelines set forth in the Report and Order.

Both Congress and the Commission recognized the merits of aggregated networks and consortia of schools, libraries and other eligible users. See, e.g., Report and Order at ¶¶ 475-478. These networks and consortia have the ability to obtain lower pre-discount prices and offer ease and efficiency of administration. If individual schools, libraries or districts were required to procure their telecommunications services on their own, their pre-discount prices would be higher and the

schools and libraries Universal Service Fund would be depleted more rapidly. Moreover, individual filings by schools and libraries to establish their eligibility and multiple filings by service providers seeking reimbursement would unnecessarily tax the administrative, technical and financial resources of all involved. Diverting the scarce resources from educational delivery to administrative procurement functions detracts from the primary mission of the schools and libraries.

The cost and administrative efficiencies available through STNs cannot be fully realized under the Universal Service Fund structure currently contained in the Report and Order unless there is a clarification or modification to permit STNs to reflect Universal Service discounts in the rates charged to their school and library members and then apply directly to the Universal Service Fund for reimbursement. The Commission, in the Report and Order, correctly concluded that STNs are not "telecommunications carriers" under the statutory definition because they do not provide service to the public.⁴ Nonetheless, as shown above, these networks frequently operate as the single liaison between two groups - telecommunications carriers/other service providers and the agencies, schools and libraries on the networks. Each of these groups can have literally hundreds of

⁴ Because the STNs serve only governmental agencies, programs and departments, they are not "other providers of telecommunications" for purposes of contribution to the Universal Service Fund. See Report and Order at ¶800.

members. Efficiency and logic dictate therefore that these STNs often are in an ideal position to deal directly with the Universal Service Fund administrator, and, in addition to the options already available to them under the Report and Order, also should be given the option to receive reimbursement directly for the discounts that the STNs provide to their eligible school and library participants.

The obvious intent of both Congress and the Commission to maximize the availability of services to schools and libraries, to ensure that schools and libraries get the most for their discount dollar and to establish the most efficient way of administering the program, coupled with the flexibility inherent in the statutory language, compels the Commission to reach the goal sought by NASTD and its members. NASTD believes the proposed methodology ensures adherence to its fiduciary duty to maximize the return on taxpayer dollars for this program. NASTD here suggests two possible alternative clarifications in the Report and Order to achieve this result:

A. Arrangements With Telecommunications Carriers

Section 254(h)(1)(B) of the Act provides that any telecommunications carrier providing service at discount rates to eligible schools and libraries shall be entitled to apply to the Universal Service Fund for reimbursement of the discount amount. In Paragraph 590 of its Report and Order, the Commission extended the ability to obtain reimbursement for such discounts to non-

telecommunications carriers that are either owned or controlled by telecommunications carriers, or that have entered into "joint ventures, partnerships or other business arrangements" with them.

NASTD submits that the arrangements between STNs and the carriers from which they purchase services may be considered the type of business arrangements contemplated in Paragraph 590 of the Report and Order. As representatives of their state governments tasked with the responsibility of aggregating services and equipment for schools, libraries and other state organizations, and because of the state-mandated procurement processes through which they must conduct business with the carriers, STNs occupy a unique business relationship with such telecommunications providers. The Commission should recognize this relationship as being of a type that would enable the STNs to apply directly for Universal Service Fund discount reimbursement.

B. Provision of Advanced Services

Section 254(h)(2) of the Act permits any entity, including non-telecommunications carriers, that provides advanced telecommunications and information services to eligible schools and libraries, to participate in the discount and reimbursement structure established under the Universal Service Fund. In the Report and Order, the Commission held that Section 254(h)(2) granted it broad authority "to enhance access to advanced telecommunications and information services, constrained only by

the concepts of competitive neutrality, technical feasibility and economical reasonableness." Report and Order at ¶ 591. Thus, "discounts and funding mechanisms that are competitively neutral, technically feasible and economically reasonable that enhance access to advanced telecommunications and information services fall within the broad authority of Section 254(h)(2)." Id.

The bundled service packages available from STNs clearly fall within funding mechanisms for advanced telecommunications and information services contemplated by Congress and the Commission. These arrangements enhance the power and flexibility of the telecommunications resources available to the schools and libraries which they serve. Further, as illustrated above, the aggregate buying power of the STNs allows them to obtain the best possible service for schools and libraries at the most affordable price, usually far beyond anything the schools and libraries could achieve on their own. By any reasonable definition, the attributes and activities of STNs, in procuring a wide range of services and equipment from multiple vendors, in bundling the equipment and services into a wide array of simple and sophisticated service offerings and in providing these services to eligible schools and libraries that wish to receive them, should qualify the STNs as providers of advanced telecommunications and information services and make them eligible to receive Universal Service support. Finally, the statutory elements of competitive neutrality, technical feasibility and economic reasonableness, are all inherent in the

STN structures. Therefore, the Commission should permit STNs to apply directly to the Universal Service Fund pursuant to Section 254(h)(2) of the Act.

III. Conclusion

NASTD and the STNs which it represents believe there is ample evidence in the Universal Service Fund legislative and regulatory language and history to indicate that such networks are precisely the kind of efficient, centralized entity which both Congress and the Commission sought to encourage through the Universal Service Fund policies. Such networks are leaders in the provision of telecommunications and information services to schools and libraries across the nation. NASTD supports the Commission's efforts to date to implement Universal Service, and hopes that the information provided in this submission will enable the Commission to implement the Universal Service process in a way which takes maximum advantage of the efficiencies available because of the efforts undertaken by STNs. Allowing STNs to seek direct reimbursement from the schools and libraries Universal Service Fund for the discounts STNs would pass on in

total to their eligible schools and libraries is a reasonable and logical way to realize this objective. NASTD and its members thank the Commission for its consideration.

Respectfully submitted,

**NATIONAL ASSOCIATION OF STATE
TELECOMMUNICATIONS DIRECTORS**

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September 26, 1997